

Levin v Brust

2022 NY Slip Op 34639(U)

October 6, 2022

Civil Court of the City of New York, New York County

Docket Number: Index No. 300202-20

Judge: Karen May Bacdayan

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

JOEL LEVIN AS SUCCESSOR TRUSTEE FOR
ARNOLD GOLDSTEIN F/B/O SHARI LYNN
GOLDSTEIN AND SAMSON MANAGEMENT
LLC, AS AGENT

Index No. 300202-20

Petitioner,

DECISION/ORDER

-against-

Motion Sequence Nos. 1 and 2

MARILYN BRUST

Respondent.

HON KAREN MAY BACDAYAN, JHC

Law offices of Jordan M. Hyman, PLLC, for the petitioner
Charles Herbert Small, Esq., for the respondent

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No: 6-27 (motion [sequence 1]); 28-30 (motion [sequence 2]).

PROCEDURAL HISTORY AND BACKGROUND

This is a nonprimary residence holdover against Marilyn Brust (“respondent”), the long-term rent stabilized tenant of record. (NYSCEF Doc No. 1, petition and notice of nonrenewal.)

The following facts are not disputed: A rent stabilized renewal lease date December 16, 2022 was mailed to respondent on December 19, 2022. (NYSCEF Doc No. 14, petitioner’s exhibit J, transmittal sheet.) Petitioner then served Respondent with a notice of nonrenewal (known colloquially as a “Golub notice”), dated December 23, 2019 (NYSCEF Doc No. 1 at 7-9), and mailed on December 26, 2019. (*Id.* at 12-13.) Twenty-three days after the date on the renewal lease offer, on January 8, 2022, respondent signed the renewal lease by choosing a two-year term commencing April 1, 2020 and expiring March 31, 2021. (NYSCEF Doc No. 7, Brust affidavit ¶¶ 6-8; NYSCEF Doc No. 10 at 3, respondent’s exhibit B, signed renewal lease.) By letter dated March 25, 2020, petitioner’s attorney wrote to respondent’s former lawyer indicating that it would not withdraw the Golub notice, and further informing the former attorney that the renewal lease offer was a nullity as the entity that appeared on the renewal lease offer, 16 Park

Ave, “is not and never was the owner and holder of the shares of cooperative corporation stock allocable to the subject premises, a cooperative apartment.” (NYSCEF Doc No. 17 at 2.)

Thereafter, petitioner caused service of the petition which was completed on August 18, 2020. (NYSCEF Doc No. 5, affidavit of service.) On October 22, 2020, respondent filed a pre-answer motion to dismiss pursuant to CPLR 3211 (a) (1) on the basis respondent signed and returned the renewal lease offer which is binding upon the landlord, and this “operates as a waiver of the Golub notice.” (NYSCEF Doc No. 8, respondent’s attorney’s affirmation ¶ 5.)

Petitioner opposes the motion on the basis that the renewal lease offer was made inadvertently by a new employee in training who had not seen a “flagging notice” that had been sent by Deslyn Neil, the “Landlord-Tenant Litigation coordinator” at Samson Management, the managing agent for the landlord. (NYSCEF Doc No. 15, Deslyn affidavit; NYSCEF Doc No. 23, petitioner’s exhibit H.) Mr. Deslyn states that Samson Management manages “approximately five thousand (5,000) residential apartment units,” and at the time the renewal offer was made to respondent there were “140 tenants with leases expiring on March 31, 2021 including [r]espondent’s apartment which were all mailed the same day by the Leasing Department.” (*Id.* ¶¶ 10-11.) Petitioner also argues that, in any event, the renewal lease offer is a nullity because “16 Park Ave, a non-existent entity, simply had no legal standing to offer a renewal lease to the Respondent-Tenant and certainly not an irrevocable offer to renew as alleged by the Respondent-Tenant. Therefore, the purported renewal lease was and is a legal nullity.” (NYSCEF Doc No. 14 ¶ 10.) This statement is supported by the cooperative corporation stock certificate and proprietary lease annexed a petitioner’s exhibits C and D, respectively. (NYSCEF Doc Nos. 18 and 19.)

Respondent’s reply consists of her attorney’s affirmation which distinguishes the cases cited by petitioner. (NYSCEF Doc No. 27.)

The motion languished on the court’s calendar for some time as a result of the COVID-19 pandemic. Petitioner then moved to restore the motion to the calendar for determination. (NYSCEF Doc No. 28, motion [sequence 2.]) Respondent does not oppose petitioner’s motion to restore the proceeding to the calendar.

Oral argument was held on October 4, 2022.

DISCUSSION

CPLR 3211 (a) (1) is a distinctly narrow ground upon which to move for dismissal. Dismissal pursuant to CPLR 3211 (a) (1) should be granted “only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Leon v Martinez*, 84 NY2d 83, 88 [1994].) Respondent has the burden of showing that the relied-upon documentary evidence is “unambiguous and of undisputed authenticity” (*Fontanetta v Doe*, 73 AD3d at 86), “resolves all factual issues as a matter of law, conclusively [disposing] of the plaintiff’s claim” (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383, 383 [1st Dept 2002]), and “utterly refutes plaintiff’s factual allegations.” (*Mill Fin., LLC v Gillett*, 122 AD3d 98, 103 [1st Dept 2014]; *see also Mendoza*, 2015 NY Slip Op 31776[U], *2-3.) Most evidence is inadequate to meet this “stringent standard.” (*See Hon. John R. Higgitt, CPLR 3211 (a) (1) and (a) (7) Dismissal Motions - Pitfalls and Pointers*, 83 NY St BJ 32, 33 [Nov./Dec. 2011].)

Generally speaking, rent stabilized renewal lease offers are required to be binding. (Rent Stabilization Code [9 NYCRR] § 2523.5 [a]; *Matter of East 56th Plaza v New York City Conciliation & Appeals Board*, 56 NY2d 544, 546 [1982] [“The fact that the landlord may not have intended the proposed lease . . . to constitute a binding offer is immaterial because the statute requires that the offer be binding”]; *Jacreg Realty Corp. v Barnes*, 284 AD2d 280, 280-81 [1st Dept 2001] [“Although there was no requirement that petitioner offer a lease renewal to respondents, once it did, respondents’ execution and delivery of the renewal lease resulted in a binding bilateral contract . . .”]; *see also Hakim v Muller*, 2002 NY Slip Op 50339[U] [App Term, 1st Dept 2002] [“The failure of landlords to deliver an executed lease form did not deprive the tenant of her right to renew under the Rent Stabilization Code”].) Moreover, owners are required to return signed renewal lease offers to tenants within 30 days of receipt. (Rent Stabilization Code [9 NYCRR] § 2523.5 [a]). “Upon failure of the owner to deliver a copy of the fully executed renewal lease form to the tenant within 30 days from the owner’s receipt of such form signed by the tenant, such tenant shall not be deprived of any of his or her rights under the RSL and this Code . . .” (*Id.*) Here, respondent timely signed the renewal lease offer and returned it to petitioner; and petitioner did not return a fully executed copy of the renewal lease within the statutorily prescribed 30 days. (RSC § 2523.5 [a].)

However, notwithstanding that the cases cited by petitioner are distinguishable, respondent's motion must be denied.¹

Petitioner's argument that the renewal lease signed by respondent on January 8, 2020 is void as "16 Park Ave" is an entity without legal authority to enter into a lease gives the court pause. True, the renewal lease clearly states at the top right on the face of the renewal offer the "Owner's/Agent's Name and Address" as "16 Park Ave c/o Samson Management" and the accompanying letter requires respondent to make rental payments to "16 Park Ave" which is described as the "building entity" to whom her rental payments must be made. (NYSCEF Doc No. 10, renewal lease offer and accompanying letter dated December 26, 2019 ["PLEASE MAKE THE CHECK PAYABLE TO THE BUILDING ENTITY (LOCATED UNDER "OWNER'S/AGENT'S NAME AND ADDRESS" (TOP RIGHT/1st LINE ONLY) WHICH IS LOCATED ON THE FACE OF THE RENEWAL FORM"].) Another letter from the Samson Management Leasing Department states that rent payments shall now be payable to "16 Park Avenue LLC." (NYSCEF Doc No. 12, letter from Samson Management to respondent dated February 8, 2018.) The Golub notice is signed by petitioner's attorney on behalf of petitioner "and Samson Management, LLC, as agent." (NYSCEF Doc No. 1 at 9). And finally, Samson management sent authorization letters via email to petitioner's attorney to commence the instant proceeding. (NYSCEF Doc No. 22.)

¹ In *Coleman v Dabrowski*, 163 Misc 2d 763 (App Term, 1st Dept 1994), the landlord mistakenly offered a renewal lease to respondent during an appeal of the trial court's denial of a respondent's motion to vacate a stipulation agreeing to a final judgment of possession and warrant of eviction. The *Coleman* court noted that the respondent had "received substantial other consideration in return for agreeing to vacate." (*Id.* at 764.) The court held that the renewal lease offer did not supersede the two-attorney stipulation to vacate the premises for consideration. Likewise, in *Mendler v Manzione*, NYLJ, June 28, 1982, at 12, c 6, 7 [App Term, 1st Dept 1982], relied upon by the *Coleman* court but cited by the petitioner herein as its own precedent, a renewal lease was offered when the respondent was still in possession of the premises pursuant to a stipulation in which the tenant had renounced her status as a rent stabilized tenant and agreed to vacate by a date certain. The *Mendler* court found that "[i]t is manifest that there was no intent on this landlord's part to revive the tenancy or to supersede the stipulation." (*Id.*) Finally, *FS 41-45 Tiemann Place LLC v Estrella*, 38 Misc 3d 29 (App Term, 1st Dept 2012) is also distinguishable from the facts of the instant proceeding as the renewal lease offer therein remained "unaccepted" by the tenant, and the landlord sent a "prompt follow-up letter to withdraw the offer. . . ." (*Id.* at 30.) Here, petitioner did not withdraw the offer, but, instead, sent an equivocal legal notice indicating that it intended to commence proceedings to evict respondent at the expiration of a prior lease which was to expired in March 2020, months after the renewal lease offer at issue was made and accepted. The petition, filed in August 2020, makes no mention of a subsequently accepted renewal lease offer. The petition is silent regarding the existence of a signed renewal lease, and of petitioner's intent to disregard and why.

Ostensibly, from the above litany of events, the renewal lease at bar was a valid offer properly made by Samson Management. However, neither party has bothered to provide a prior renewal lease between the parties, or the contract between Samson Management and Joel Levin as Successor Trustee for Arnold Goldstein F/B/O Shari Lyn Goldstein. Moreover, and importantly, respondent's reply ignores petitioner's opposition on this ground. On the record before the court, it cannot be said that respondent has met the exacting standard of a CPLR 3211 (a) (1) motion; the documentary evidence has not resolved all factual issues as a matter of law and utterly refuted plaintiff's factual allegations. (*See Fontanetta and Fortis Fin. Servs., LLC, supra.*)

CONCLUSION

For the foregoing reasons, respondent has not met the stringent standard for dismissal of this proceeding pursuant to CPLR 3211 (a) (1). Accordingly, it is

ORDERED that petitioner's motion to restore this proceeding to the court's calendar is GRANTED; and it is further

ORDERED that respondent's motion to dismiss is DENIED; and it is further


ORDERED that respondent shall serve and file an answer within two weeks of this decision and order; and it is further

ORDERED that the parties shall appear in person in Room 523, Part F of the New York City Civil Court house for settlement or a pre-trial conference on November 7, 2022 at 9:30 a.m.

This constitutes the decision and order of this court.

Dated: October 6, 2022
New York, NY

So Ordered.



Hon. Karen May Bacdayan

HON. KAREN MAY BACDAYAN
Judge, Housing Part